DOCUMENT RESUME

ED 039 858 HE 001 591

AUTHOR Howe, Ray A.
TITLE To What Extent Do the Devices, Techniques, and Procedures of Industrial Relations Apply to Higher Education?
INSTITUTION American Association for Higher Education, Washington, D.C.
PUB DATE 2 Mar 70
NOTE 5p.; Paper presented at the 25th national conference of the American Association for Higher Education, Chicago, Illinois, March 2, 1970

EDRS PRICE EDRS Price MF-$0.25 HC-$0.35
DESCRIPTORS *Collective Bargaining, College Faculty, Community Colleges, *Faculty, *Higher Education, *Teacher Administrator Relationship

ABSTRACT

It is likely that the number of colleges and universities at which collective bargaining techniques are used will grow. Collective bargaining has at least three positive aspects. (1) It is the most effective means yet to emerge from within a democratic society to effect the resolution of differences of opinion between employer and employee concerning matters of common interest. (2) It is the procedure most likely to produce mutually satisfactory agreements when employed in good faith. (3) It creates at least the potential for a balance of power situation in which differences can be more equitably resolved. The agenda and scope of collective bargaining tends to determine itself while the experience is in process, but there is great need for understanding the possibilities and limitations of the process. The emergence of a hierarchy within the administration, with a concomitant development of varying levels of status, and the resulting bureaucracy is probably the principal cause behind the rise of collective bargaining. (AF)

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Group 19
Monday Morning and Afternoon, March 2

TO WHAT EXTENT DO THE DEVICES, TECHNIQUES AND PROCEDURES OF INDUSTRIAL RELATIONS APPLY TO HIGHER EDUCATION?*

Ray A. Howe
Director of Labor Relations
Henry Ford Community College

The question posed by the title to these remarks may well be an appropriate and most timely inquiry, considering what seems to portend for higher education, but it may be asked in the wrong quarter and the response, in consequence, may prove to be lacking in authority.

For it seems most likely, perhaps predictable, even inevitable, that the answer will be provided, not in words but in action, and not by authorities in the field, but by the respective faculties of each of the many individual institutions of higher education across this country.

Perhaps the future tense is the wrong one. The answer may be en route even now.

It is certainly no secret that collective bargaining has been embraced widely by community college faculties in Michigan, less widely but still very significantly in Illinois, Wisconsin and New York and in increasing numbers and with accelerating tempo in several other states.

Nor is this presently reserved to community colleges.

The faculties of Boston Teachers College in Massachusetts and Central Michigan University have, I am informed, already formally invoked the process. They have named an exclusive bargaining agent and are currently undertaking their first master agreements. The City University of New York faculty opted last year for collective bargaining for both its tenured and its non-tenured faculty and has subsequently produced two contracts, each of which has attracted considerable national attention, not only because of its mere existence but as a consequence of its contents. The State University of New York, that colossus of higher education, has plodded its way laboriously through a series of steps in litigation, and now seems, to dispassionate observers, to be nearing the introduction of the mechanism, at least to the level of an election concerning exclusive representation by a single bargaining agent. The Faculty Senate of the State College system of California has been giving the subject serious study for the past several months. 'Advisory' elections have been conducted on several of its individual campuses, on some of which affirmative opinion has been clearly expressed.

The issue of collective bargaining in higher education is manifestly in the wind.

There is little reason to doubt that it will grow.

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*Paper presented to Discussion Group 19 at the 25th National Conference on Higher Education, sponsored by the American Association for Higher Education, Chicago, Monday, March 2, 1970. Permission to quote restricted.

HE001591

It serves no useful purpose to designate these as 'industrial' relations merely to suggest a limited application of collective bargaining techniques and perhaps, by implication, a certain impropriety in respect to our particular field of enterprise.

The question is important enough to deserve objective analysis, devoid, insofar as possible, of some rather obvious and deep-seated prejudices or biases or preferences, the existence of which cannot be denied and certainly should not be ignored.

A straightforward and overly simple answer is readily available. Yet the statement that faculties will ultimately make the effective decision, although completely accurate and perhaps even comprehensive, does not suffice in the present context. The question is asked somewhat philosophically and is deserving of commensurate consideration.

At least three things must be noted concerning the collective bargaining process in order to have a minimally adequate perspective.

First, collective bargaining is the most effective means yet to emerge from within a democratic society to effect the resolution of differences of opinion between those who employ and those who are employed, concerning matters of common interest. Note that while differences are present, the emphasis is upon resolution of those differences, and note further that the underlying assumption is of the existence of a substantial body of common interest.

Second, deriving directly and logically from the previous statement, it should be noted that Myron Lieberman pointed out the following some 14 years ago.

> The theory underlying collective bargaining is that if the parties bargain in good faith, they will practically always reach an agreement. . . . Collective bargaining does not force the parties to agree. It is merely the procedure most likely to produce mutually satisfactory agreements when employed in good faith by both parties.[1]

Third, the principal effect of the invocation of collective bargaining is to create at least the potential for a balance of power situation, within which aforementioned differences of opinion can be more equitably resolved than would prove true in an imbalanced power situation.

These are, however, not the 'devices, techniques and procedures' of which our question speaks. These are far more basic. While they cannot be forgotten, let us set them aside for the moment.

What are the 'devices, techniques and procedures,' the applicability to higher education of which we explore? These include, I would assume, although they are by no means limited to, the bargaining table itself; the privacy of the bargaining room; the exchange of proposals or demands; the interplay of counterproposals; the exercise of a power relationship in its many manifestations; the attempt at the construction of a 'package' settlement by compromise; perhaps the utilization of mediation, of fact-finding or of arbitration; possibly, a strike. Ultimately it

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[1]Lieberman, Myron. Education As A Profession. Prentice-Hall, Inc., Englewood Cliffs, N.J., 1956, p. 355.

means arrival, by one means or another, at a master agreement, a contract if you will, mutually agreed upon and mutually binding. It means a new relationship, more formal, less paternalistic, more legalistic, more bilateral, more direct, but not necessarily less flexible. Like any other form of human relations much depends upon the attitudes, the aptitudes, the skills, the arts and the capacities for empathy of the practitioners.

In 1966-1967 a Task Force of the A.A.H.E. was commissioned to examine the then embryonic phenomenon. Several of its summary statements warrant consideration, although removal from the context of the entire report does an obvious disservice. Let me cite one or two at random emphasizing, however, the clear preference of the Task Force for other approaches to fulfill faculty aspirations.

"Many commentators on the educational scene regard the formation of bargaining agencies as distasteful or inappropriate. They contend that unions or other bargaining agencies are in basic conflict with the professional values of the academic person. This contention may be correct in practice as well as theory, but it should not a priori preclude a majority of faculty members' designating an organization as their bargaining unit. Like other employees, professional or non-professional, faculty members have the right to select organizations of their own choosing."[2]

The Task Force goes further. "If the issue of bargaining status has been joined, regularized election and recognition procedures should be developed and applied to college campuses, public and private. In the absence of statutory requirements, the administration and the faculty should initiate private or ad hoc recognition procedures and abide by the results for purposes of recognizing and dealing with a bargaining agent."[3]

Should this be accepted, the question of devices, procedures and techniques immediately arises. Collective bargaining is an extremely flexible and a very adaptable process. Devices, procedures and techniques employed would seem likely to flow from the perceived needs of the participants, whether or not these perceptions are soundly based. Of all such considerations, the strike is certainly the most extreme, the most dramatic and undoubtedly among the most questionable as appropriate to higher education. The Task Force has something very specific to say about this.

"While we would be hard pressed to deny the crucial importance of higher education, few aspects of this activity are so essential in the short run that society would be threatened by their temporary cessation. . . . Accordingly, we conclude that there are no decisive reasons why the faculty should be denied the opportunity to strike, in terms of either society's essential need or the long-run interests of the institution."[4]

The agenda and the scope of collective bargaining is something that tends to determine itself while the experience is in progress. Much depends upon the

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[2] Faculty Participation in Academic Governance. American Association for Higher Education, Washington, D.C., 1967, p.44.

[3] Ibid., p. 45.

[4] Ibid., pp. 51 and 52.

moderation of the approach of the bargaining agent, but very much also depends upon the arts and skills and the sophistication of the chief negotiator who faces the bargaining agent. Great need for understanding of the process, its possibilities and its limitations is obvious. At least one experienced analyst and practitioner feels the situation requires some definition and some education. Myron Lieberman presents the following:

". . . Most professors fail to understand the distinction between an employment problem and a professional one. Employment problems should be resolved within the context of employer-employee relations; professional problems are those appropriate for action by professional organizations independently of employer action."[5]

Any precise delineation between the two categories is, of course, an extremely delicate matter and will be accomplished only by mutual agreement of parties to the enterprise and not by any unilateral decision. In effect, one is almost obliged to say that "What is or is not negotiable is, of itself, a negotiable matter."

The designation of these as "Industrial Relations" is, I submit, a misnomer. These are 'human relations' which happen, in the past, to have been utilized almost exclusively within industrial circles. We are now confronted with the possibility that these 'human relations' will, in some form or other, be brought to bear, in certain measure, upon some institutions of higher learning.

The emergence of a hierarchy within administration, with a concomitant development of varying levels of status, accompanied by the almost inevitable bureaucracy, is probably the principal reason for such a reach for collective bargaining as either now exists or impends.

In a very real sense this 'reach' is imitative rather than creative. The faculty which aspires to more effective voice in the determination of institutional decision-making has three very apparent models to choose from: the traditional Faculty Senate model, the collective bargaining model, and the confrontation model. At the moment the collective bargaining model seems emergent.

But this is far from a closed issue. Creative minds can still reach for new and alternative models, and they should be encouraged to do so. Creative minds can also be applied to the possibilities for making the current models, including collective bargaining, more palatable and tolerable in the institutional context.

There is obvious reason for reaction to the adversary nature of collective bargaining. But the legal profession has demonstrated that adversary relationships can be conducted with mutual respect between the adversaries and with productive outcomes emanating therefrom. There is evident reason for closer examination of the internal aspects of collective bargaining which aim towards conflict resolution. Such examination, however, should occur without the biases, the preferences and the emotional, even visceral, reactions which seem omnipresent at the moment.

It is perfectly legitimate to hold against collective bargaining. It is incumbent, however, on those who do so to undertake to provide acceptable alternatives or to convince others that the negotiations process, if it does appear, can be and should be modified and moderated to tolerable limits.

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[5]Lieberman, Myron. "Representational Systems in Higher Education," Employment Relations in Higher Education, Phi Delta Kappa, Inc., Bloomington, Indiana, 1969, p. 55.

It is perfectly legitimate to opt for collective bargaining. Here, the burden is to convince enough faculty that it is desirable and/or appropriate and/or effective.

The decision is with the faculty.

But to quote the A.A.H.E. Task Force once more, in conclusion. "The establishment of a proper statutory framework is an important, but not a sufficient, condition for the evolution of constructive bargaining relationships. In the long run, the attitudes of administrators and members of the board of trustees towards the bargaining agent selected by a majority of the faculty will have a determinative effect on the nature of the relationship."[6]

One last quotation, this from John F. Kennedy's inaugural address and commonly attributed to a rather distinguished participant in higher education, John Kenneth Galbraith. "So, let us begin anew --- remembering on both sides that civility is not a sign of weakness and sincerity is always subject to proof. Let us never negotiate out of fear. But let us never fear to negotiate."

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[6]Faculty Participation in Academic Governance, op. cit., p. 66.